

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos 95 to 126 of 1996

with

CIVIL APPLICATION No 142 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

UNION OF INDIA

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR JAYANT PATEL for Petitioner
MR PG DESAI, GP for Respondent No. 1 in F.A. Nos.
95 to 114 of 1996
MR RC KODEKAR, AGP for Respondent No.1 in F.A. Nos.
115 to 126 of 1996
MR NITIN M AMIN for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 03/11/1999

COMMON ORAL JUDGEMENT : [Per: Kadri, J.]

1. The appellant has filed this group of First Appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") read with Section 96 of the Code of Civil Procedure, challenging the common judgment and award dated November 22, 1993, passed by the learned Second Jt. District Judge, Mehsana in group of Land Acquisition Reference Nos.705 to 736 of 1988.

2. A proposal was sent by Defence Estate Officer, Gujarat Circle, for acquiring agricultural lands of village Vadsar, Taluka Kalol, District Mehsana, for the purpose of Military Radar Communication Project Office of the Defence Department of the Union of India. The said proposal was scrutinised by the State Government and a preliminary Notification under Section 4(1) of the Act came to be issued, which was published in the Government Gazette on June 25, 1985. After following the procedure prescribed under the Act, the Land Acquisition Officer submitted his report under Section 5(A-2) of the Act to the State Government. The said report of the Land Acquisition Officer was scrutinised and declaration under Sec.6 was made, which came to be published in the Government Gazette on January 30, 1986. Notice under Section 9 (3)(4) of the Act were served on the persons interested of the acquired lands. The persons interested had lodged their claims before the Land Acquisition Officer claiming Rs.30 per sq. meter for their acquired lands. The Land Acquisition Officer after hearing the claimants and on the basis of material produced before him, made his award on May 8, 1987 and offered compensation of the acquired lands of village Vadsar at the rate of Rs. 1.60 per sq. meter. The claimants were of the opinion that compensation offered by the Land Acquisition Officer was inadequate and therefore, they filed written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court for determination of the compensation of the acquired lands. The Land Acquisition Officer referred the applications filed by the owners of the acquired lands to the District Court, which came to be numbered as Land Acquisition Reference Nos. 705 of 1988 to 736 of 1988. The claimants in their applications pleaded that the acquired lands were fertile and they used to raise 2 to 3 crops in a year. According

to the claimants, their lands were situated on a developing area and the surrounding agricultural lands were already converted into non-agricultural lands; that the village Vadsar was connected with other parts of the State by road; that the village Vadsar was having facilities of schools, electricity, water etc. It was pleaded that Kalol city and market yard were nearer to the acquired lands. The claimants therefore pleaded that the compensation offered by the Land Acquisition Officer was inadequate looking to the fertility and situation of the acquired lands.

3. The applications filed by the claimants were contested by the State Government by filing their common reply at Exh.8, inter alia, contending that the Land Acquisition Officer had awarded just and adequate compensation for the acquired lands and had taken into consideration all the relevant aspects and materials placed before him. It was pleaded by the State Government that the claimants have claimed exaggerated compensation and, therefore, the claim applications be dismissed with costs.

4. The Reference Court on the basis of the above pleadings, framed issues at Exhibit 10 in Land Acquisition Reference No. 736 of 1988 which was treated as main Reference and the parties have led common evidence in Land Acquisition Reference No. 736 of 1988.

5. The claimants to substantiate their claims of Rs. 30 per sq. meter, examined one Natvarbhai Maganbhai at Exh.14, who was a claimant in LAR No. 709 of 1988. The claimants in support of their claim, produced documentary evidence, such as certified copy of extracts 7/12 at Exh. 19 to 54; certified copy of the common judgment and award rendered at Exh. 58. On behalf of State of Gujarat one Mr. Shankarlal Manilal Pandya, who was the process server, was examined at Exh.56 dated August 27, 1983 by the learned Second Extra Assistant Judge, Mehsana in Land Reference Case No. 250 of 1988, which was in respect of acquired lands of village Khoraj - Jamiyatpura. The claimants also produced certified copy of the judgment and award dated 18th April, 1983, passed by the learned Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur, in Land Reference Case No. 2/83 and allied matters, which covered the acquired lands of village Khoraj - Jamiyatpura. The acquiring body of the State of Gujarat produced any documentary evidence.

6. The Reference Court after appreciating the oral

as well as documentary evidence, deduced that the claimants had not produced any evidence to substantiate their case that they were taking three crops in a year. The Reference Court further deduced that the earlier award at Exh.17, which is in respect to the acquired lands of village Khoraj - Jamiyatpura was relevant and comparable for determination of the market value of the present acquired lands of village Vadsar. The market value of the acquired lands of village Khoraj-Jamiyatpura was determined at the rate of Rs. 30 per sq. meter as on January 4, 1981. The reference Court deduced that the acquired lands of Khoraj - Jamiyatpura were adjoining the present acquired lands of village Vadsar and, therefore, it was deduced that the acquired lands of village Khoraj Jamiyatpura was relevant and comparable for determination of the market price of the acquired lands of village Vadsar. The Reference Court relying on the previous award of village Khoraj - Jamiyatpura, determined the market price of the present acquired lands at the rate of Rs. 30 per sq.meter, which has given rise to the filing of these Appeals by acquiring body i.e. Defence Estate Officer, Military Radar Communication Project Office of the Defence Department, Cantonment Area, Shahibaugh, Ahemdabad.

7. Mr. Jayant Patel, learned Addl. Central Government Standing Council vehemently submitted that Award - Exh.17 which was in respect of acquired lands of village Khoraj - Jamiyatpura was not at all relevant and comparable for the determination of the market value of the present acquired lands. Learned counsel Mr. Jayant Patel has further submitted that the Reference Court had mechanically applied its mind in placing reliance on previous Award at Exh.17 without taking into consideration the fertility and situation of the villages Khoraj - Jamiyatpura and village Vadsar. The learned counsel for the appellant submitted that the area of acquired lands of village Khoraj - Jamiyatpura was covering smaller piece of land, whereas in the present acquisition, 250 to 275 acres of land was acquired for the public purpose and, therefore also, the Award at Exh.17 covers a smaller area was not comparable to the large area covering the acquired lands of present acquisition. It is submitted by the learned counsel for the appellant that the claimants had not led sufficient evidence before the Reference Court for determination of the market value of the acquired lands and, therefore, the appeals should be allowed and the Reference cases should be remanded back to the Reference Court for just and proper determination of market value of the acquired lands.

7. It is well settled principle propounded by the Supreme Court in catena of decisions that previous award of Reference Court in the absence of reliable evidence, such as sales transaction, opinion of the expert and yield method, could provide a good guidance to the Reference Court for determination of the market value of the acquired lands. In the present Appeals, neither the claimants nor the acquiring body or the State Government led documentary evidence, such as, sale transaction, opinion of expert and yield method before the Reference Court. Therefore, to award just and adequate compensation to the claimants, the Reference Court had placed reliance on the previous award at Exh.17, which is in respect to the acquired lands of village Khoraj Jamiyatpura. In our opinion, the Reference Court had not committed any error in placing reliance on the previous award of village Khoraj Jamiyatpura. The land under acquisition in respect of previous Award at Exh.17 with respect to Khoraj Jamiyatpura came to be acquired in January 1981. The total area of the acquired lands of Award Exh.17 were of 8 acres. The Reference Court had determined the market value of the acquired lands of village Khoraj Jamiyatpura in the month of January 1981 at the rate of Rs. 33/- per sq. meter. Further it is submitted by learned counsel for the appellant that village Jamiyatpura was at a distance of 9 k.ms and, therefore, the Reference Court erred in placing reliance on the previous award at Exh.17 of village Khoraj Jamiyatpura. The submission of the learned counsel for the appellant deserves no merit. The claimant's witness - Natvarlal Maganbhai - Exh.14 deposed that village Khoraj - Jamiyatpura was at a distance of 2 Kms. from village Vadsar - and boundaries of two villages touch each other. He deposed that the acquired lands of village Khoraj- Jamiyatpura and the present acquired lands of village Vadsar were having same fertility. Witness Natvarlal Maganbhai - Exh. 14 also claimed that village Vadsar was having facilities of telephone, water supply, high school, banks and transport etc. He also claimed that the claimants of acquired lands used to take three crops in a year and were getting annual net income at Rs.5,000/-. He deposed that acquired lands of village Vadsar was having irrigation facilities. Claimants witness Natvarlal Maganbhai was cross-examined by the learned Government Pleader, who appeared on behalf of the State of Gujarat, but the witness has not at all cross examined with respect to the distance between the villages Vadsar and Khoraj - Jamiyatpura. Therefore his deposition in-chief has gone unchallenged, which indicated that boundaries of village Khoraj Jamiyatpura

village Vadsar were touching each other and both were adjoining to each other. Witness examined on behalf of State of Gujarat, namely, Shankarlal Manilal Pandya Exh.56, who was a process server, showed his ignorance about the distance between Khoraj - Vadsar. He also showed his ignorance about the surroundings of land of village Vadsar. Therefore, in our opinion, the submission of the learned counsel for the appellant that the Reference Court erred in placing reliance on the previous award of village Khoraj Jamiyatpura for determination of market price of the present acquired lands deserves to be rejected. The market value of the acquired lands of village Khoraj Jamiyatpura was determined at the rate of Rs. 33 per sq. meter as on December, 1981. In the present acquisition, the lands were notified for acquisition on June 25, 1985 and there was a gap of nearly three and half years. It is born out from the record of the present case that prices of agricultural lands had uprisen every year because of acquisition of the agricultural lands of surroundings villages, and there was a heavy pressure on the lands of village Vadsar. Therefore, the rise of price by 10% every year will have to be given to arrive at the correct market value of the land of village Vadsar in the year 1985. As stated earlier, for the acquired lands of village - Khoraj Jamiyatpura, the Reference Court had determined the market value at the rate of Rs. 33 per sq. meter. If, rise of 10% is applied, then the market price of the lands of village Jamiyatpura - Khoraj would be Rs. 45 per sq. meter. The acquired lands of village Khoraj Jamiyatpura was covering smaller piece of land, whereas in the present acquisition covers large area, some deduction will have to be given. It has come on record that village Jamiyatpura - Khoraj were touching the National Highway whereas the present acquired lands of village Vadsar at a distance from the National Highway, but, nevertheless, they were touching the State Highway. Even if, 1/3 deduction is given on the market value of the lands of village Khoraj Jamiyatpura in the year 1985 which comes to Rs. 45 per sq. meter, the market price arrived at for the present acquired lands at the rate of Rs.30 cannot be said to be excessive. On the contrary, in our view, the market value determined by the Reference Court for the acquired lands of village Vadsar is just and adequate. We may also note that the previous award of village Jamiyatpura - Khoraj was in all respects relevant and comparable for determining the market value of the present acquired lands of village Vadsar. It is brought to the notice of this Court that the previous award at Exh.17 in respect to the acquired lands of village Khoraj - Jamiyatpura was not challenged before

any higher forum. In our opinion, the previous award of village Khoraj Jamiyatpura had become final and, therefore, the Reference Court had not committed any error in replacing reliance on the previous award at Exh.17 of the acquired lands of village Khoraj Jamiyatpura for the determination of the market price of the acquired lands of village Vadsar.

8. On the foregoing discussion, we are of the view that the market value as determined by the Reference Court with respect to the acquired lands of village Vadsar is just and adequate and reasonable and no interference is called for by this court. The other statutory benefit extended to the respondents - claimants under Section 23(1-A), 23(2) and under Section 28 of the Act by the Reference Court are not disturbed and are hereby upheld. In the result, we do not find any merit in this group of appeals and the same are dismissed with no order as to costs.

9. As the First Appeals are dismissed, ad interim relief granted in Civil Application No. 142 of 1995 on 11.1.1996 and Civil Applications No. 104 of 1996 to 135 of 1996 and Civil Applications No. 143 of 1996 to 173 of 1996 shall stand vacated. Rule is discharged in each Application with no order as to costs.

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